

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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United States of America,

Criminal No. 09-55 (1) (RHK/SER)

Plaintiff,

**ORDER**

vs.

Antonio Derrick Smith,

Defendant.

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Before the Court is Defendant's "Motion to Modify Sentence Per U.S.C. 3582(c)(2)." By way of background, Defendant was sentenced to a prison term of 120 months in January 2010. He had entered a plea of guilty to distributing 5 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a) and (b)(1)(B) and 846. With two prior felony convictions for crimes of violence or controlled substance offenses, he was classified as a career offender. The applicable advisory guideline range was 188 to 235 months (based on a criminal history category VI and an offense level of 31); he was also subject to a mandatory minimum sentence of 60 months.

As the Government correctly points out in its Response to the instant Motion, the Defendant is not eligible for any sentence reduction under Section 3582(c)(2) as he was properly sentenced as a career offender and the guidelines range amendments, on which Defendant relies, did not lower his applicable imprisonment range. In addition, the Fair Sentencing Act of 2010 was not made retroactive to defendants whose offense conduct

and sentence occurred before the August 3, 2010 enactment, which is the Defendant's situation here.

Based on the foregoing, and all the files, records and proceedings herein, Defendant's Motion to Modify Sentence Per 18 U.S.C. 3582(c)(2) (Doc. No. 359) is **DENIED.**

Dated: January 7, 2013

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge